

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	Case No. 16-52208
)	
Janet Heeter)	Chapter 13
)	
)	
Debtor)	Judge Preston
)	

MOTION TO AVOID JUDGMENT LIENS

Now comes Debtor, Janet Heeter by and through the undersigned counsel, pursuant to 11 U.S.C. Section 506(a), and respectfully requests this Honorable Court to issue an order avoiding three statutory liens of creditor OHIO DEPARTMENT OF TAXATION against the real estate of Debtor. Debtor makes this request on the basis that secured first and second mortgages, as well as three judgment liens of Ohio Department of Job and Family Service and two statutory liens of Ohio Department of Taxation, on the subject real estate exceed the value of that property, and there is no equity to secure the three most recent Ohio Department of Taxation statutory liens, as more fully set forth in the Memorandum in Support, below.

Respectfully submitted,

/s/ Erin E. Schrader
Erin E. Schrader (0078078)
Attorney for Debtor
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MEMORANDUM IN SUPPORT

In support of said Motion, Debtor represents to this Honorable Court as follows:

1. That the Order Confirming the Chapter 13 Plan of Debtor was filed on June 21, 2016;
2. That Debtor has been consistent in remitting her Chapter 13 plan payments;
3. That Debtor is the owner of certain residential real property situated at 521 E. Main St., Circleville, Ohio 43113;
4. That Debtor is entitled to exempt said residential real property under Section 2329.66(A)(1)(b) of the Ohio Revised Code;
5. That the real estate was appraised for an uncontested fair market valuation of \$63,967 as of the date of the filing of the bankruptcy. Said written appraisal was filed on May 14, 2016;
6. That the real estate is secured by a first mortgage to Fifth Third Bank in the amount of \$43,364.00;
7. That the real estate is secured by a second mortgage to Fifth Third Bank in the amount of \$16,897.00;
8. That the real estate is secured by three judgment liens in favor of Ohio Department of Job & Family Services in the amounts of \$376.83, \$158.58, and \$173.98;
9. That the real estate is secured by two statutory liens in favor of Ohio Department of Taxation in the amounts of \$2287.88 and \$1684.86;
10. That on or about December 11, 2015, Creditor Ohio Department of Taxation perfected a statutory lien in the amount of \$3385.22 against the real estate of Debtor (Pickaway County Common Pleas Court Case No. 2015 SL 1158);
11. That on or about January 19, 2016, Creditor Ohio Department of Taxation perfected a statutory lien in the amount of \$3386.96 against the real estate of Debtor (Pickaway County Common Pleas Court Case No. 2016 SL 0006);
12. That on or about February 5, 2016, Creditor Ohio Department of Taxation perfected a statutory lien in the amount of \$3350.29 against the real estate of Debtor (Pickaway County Common Pleas Court Case No. 2016 SL 0068);
13. That Creditor is neither an infant, an incarcerated convict, nor an incompetent person;

14. The amount due on the Fifth Third first and second mortgages, as well as three judgment liens of Ohio Department of Job and Family Service and two statutory liens of Ohio Department of Taxation, exceed the undisputed value of the subject real estate. There is, therefore, insufficient equity in the subject real estate to secure Ohio Department of Taxation's three most recent statutory liens. These liens should be deemed to be unsecured pursuant to 11 U.S.C. § 506(a). See *In Re Lane*, (6th Cir. 2002), 280 F.3d 663, 664. See *In re Sanders*, 202 B.R. 986, 988-91 (Bankr. D. Neb. 1996), *In Vaillancourt v. Marlow (In re Vailancourt)*, 197 B.R. 464 (Bankr. M.D. Pa 1996), *Castellanos v. PNC Bank (In re Castellanos)*, 179 B.R. 393, 395 (Bankr. M.D. Pa 1994), *In re Woodhouse*, 172 B.R. 2-3 (Bankr. D.R. I. 1994)
15. That the statutory liens of Creditor will interfere with the ability of Debtor to obtain a fresh start subsequent to the pending bankruptcy proceeding.

WHEREFORE, Debtor respectfully requests this Honorable Court to issue an order voiding three statutory liens of Creditor Ohio Department of Taxation and for such other and further relief as may be deemed appropriate and equitable.

Respectfully submitted,

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NOTICE AND CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing attached Motion was served by Ordinary U.S. Mail this date on the parties whose names and full addresses are listed below as and for **NOTICE** that the attached Motion has been filed. The undersigned will present to the Court a proposed Order granting the Motion sought unless within twenty-one (21) days after this date a written Memorandum in Opposition, along with a Request for a Hearing on such opposition, is filed with the Clerk of Court, 170 N. High Street, Columbus, Ohio, 43215, and served on the undersigned.

Dated: 7/25/16

/s/ Erin E. Schrader
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